

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADELAIDE GAIL ZAPPA AND :
ADELAIDE GAIL ZAPPA as sole trustee of :
The Zappa Family Trust u/t/d November 15, 1990 :
a California Revocable Trust, :
: 08 Civ. 396 (WHP)

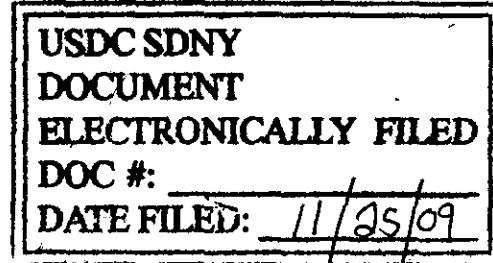
Plaintiffs, :

ORDER

-against- :

RYKODISC, INC., :
: Defendant. :

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WILLIAM H. PAULEY III, District Judge:



This Court conducted a teleconference with the parties' counsel on November 24, 2009, concerning a discovery dispute over the supplemental report filed by Plaintiffs' expert witness Matthew Hurweitz. In this Court's Scheduling Order dated July 9, 2009, expert discovery was to conclude on November 6, 2009. On October 29, Zappa's counsel contacted Rykodisc asking for an extension of expert discovery to purportedly allow time to complete depositions. Rykodisc agreed, and this Court extended discovery in an Order dated November 10, 2009. The next day, Zappa's counsel submitted a 195-page "supplemental" report from Hurweitz purporting to amplify his 8-page initial report.

This Court is not persuaded that Hurweitz's lengthy second report is, in any conceivable way, a supplement. Moreover, the late filing of the report creates reciprocal difficulties. For example, counsel for Zappa indicated to the Court the need to re-depose Hurweitz after Rykodisc's expert examines the "supplement." Therefore, this Court orders Hurweitz's supplemental report stricken unless Plaintiff pays \$10,000 to Defendant's counsel to

reimburse Defendant for the cost of conducting a second deposition of Hurweitz.

In addition, Defendant may submit a rebuttal supplemental expert report by December 14, 2009. Hurweitz's second deposition, as well as any further deposition by Plaintiff on Defendant's rebuttal supplemental report, shall be completed by January 14, 2010. Counsel for the parties are advised to familiarize themselves with this Court's Individual Practices, specifically the prohibitions regarding phone calls to chambers and faxes without permission.

The time for the parties to submit the joint pre-trial order is extended from December 14, 2009 to February 5, 2010. This final pre-trial conference is rescheduled from January 8, 2010 until February 11, 2010, at 2:00 p.m.

Dated: November 25, 2009
New York, New York

SO ORDERED:



WILLIAM H. PAULEY III

U.S.D.J.

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